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In re Application of :
JACKSON et al. :
Application No.: 09/462,962 :
PCT No.: PCT/GB98/02115 :
Int. Filing Date: 16 July 1998 :
Priority Date: 16 July 1997 :
Attorney Docket No.: MEWE-010 :
For: INTERACTION OF ATM, ATR OR DAN-
PK WITH P53

NOTIFICATION

The above-captioned application is before the Legal Affairs Division of the PCT Legal Office for consideration of issues arising under 35 U.S.C. 371.

BACKGROUND

On 16 July 1998, applicants filed international application no. PCT/GB98/02115 which claimed a priority date of 16 July 1997, and designated the United States. A copy of the international application was communicated to the United States Patent and Trademark Office from the International Bureau on 28 January 1999. The international application named David Phillip Lane; Byron Hann; Stephen Jackson; Nicholas David Lakin and Graeme Cameron Murray Smith as applicants/inventors. Byron Hann was deleted as applicant/inventor under PCT Rule 92bis. A Demand was filed with the International Preliminary Examining Authority electing the United States. As a result, the deadline for entry into the national stage in the United States expired 30 months from the priority date, on 17 January 2000. (16 January 2000 was a Sunday.)

On 14 January 2000, applicant filed a Transmittal Letter (Form PTO-1390) for entry into the national stage in the United States which identified the international application as PCT/US98/02115. Accompanied the transmittal letter, applicant included: (1) an information disclosure statement; (2) an unexecuted declaration; (3) a preliminary amendment; and (4) a check in the amount of \$1404 (\$840 as the basic national fee, \$18 for additional total claim, and \$546 for seven additional independent claims).

On 17 March 2000, the United States Designated/Elected Office mailed a Notification of Missing Requirements under 35 U.S.C. 371 (Form PCT/DO/EO/905) indicating that an oath or declaration in compliance with 37 CFR 1.497(a) and (b) must be filed. The notification set a one-month time limit in which to respond.

On 10 April 2000, applicant filed a second Transmittal Letter accompanied by an executed declaration identifying the international application as PCT/GB98/02115. The declaration was executed by: Stephen Jackson; Nicholas David Lakin; and Graeme Cameron Murray Smith.

On 26 April 2000, a Notification of Acceptance was issued identifying the 35 U.S.C.102(e) and 371(c) date as 10 April 2000. Subsequently, an Official Filing Receipt was issued indicating a "FILING DATE" of 10 April 2000 and indicating that "this application is a 371 of PCT/US98/02115." The Notification of Acceptance and Official Filing Receipt were vacated on 08 June 2001.

On 30 May 2000 and 07 March 2001, applicant filed a "Request for Corrected Filing Receipt." In a decision dated 08 June 2001, applicants' request was dismissed without prejudice. Applicants were notified that the Transmittal Letter (Form PTO-1390) submitted by applicants misidentified the international application number as PCT/US98/02115. Based on applicant's error, a national stage application file was created for PCT/US98/02115, rather than for PCT/GB98/02115 and the application was abandoned for failure to pay the basic national fee prior to the 30 months from the priority date.

On 25 June 2001, applicant filed "Request for Reconsideration or in the Alternative Petition for Revival under 37 C.F.R. 1.137(a) or in the Alternative (B)." The petition was granted under 37 CFR 1.137(b) in a Decision dated 27 November 2001.

On 06 December 2001, the United States Designated/Elected Office (DO/EO/US) mailed a "NOTIFICATION OF ACCEPTANCE OF APPLICATION UNDER 35 U.S.C. 371 AND 37 CFR 1.494 OR 1.495" (Form PCT/DO/EO/903) which set forth a 35 U.S.C. 371 completion date of 10 April 2000.

DISCUSSION

A review of the application file and other Patent and Trademark Office records reveals that the requirements of 35 U.S.C. 371(c) for entry into the national stage in the United States of America have not been completed as indicated in the Notification of Acceptance mailed by the DO/EO/US on 31 January 2000. Specifically, the oath or declaration requirement under 35 U.S.C. 371(c)(4) for entry into the national stage in the United States of America does not name and has not been executed by inventor, David Phillip Lane. As such, the 06 December 2001 Notification of Acceptance of Application was erroneously mailed by the DO/EO/US and must be vacated.

CONCLUSION

Accordingly, the 06 December 2001 Notification of Acceptance of Application is hereby VACATED.

Applicant must submit either: 1) a submission under 37 CFR 1.497(d) requesting correction of the inventors named in the international application to delete David Phillip Lane, or (2) a new declaration naming and signed by: David Phillip Lane; Stephen Jackson;

Nicholas David Lakin and Graeme Cameron Murray Smith accompanied by an acceptable explanation of the misnaming of the inventor on the present declaration, or (3) a showing that a 92bis change regarding David Phillip Lane was made prior to the National stage filing.

A proper response, as discussed above, must be filed within **TWO (2) MONTH** of the date of mailing of this notification. Extensions of time may be obtained under 37 CFR 1.136(a).

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, D.C. 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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